

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR  
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CIVIL WRITS No. 4074 of 2004

BHAJAN LAL  
V/S  
STATE & ORS.

Mr. VARUN GOYAL, for the appellant / petitioner

Date of Order : 18.10.2004

HON'BLE SHRI N P GUPTA, J.

ORDER  
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Heard learned counsel for the petitioner.

The learned Addl. Collector has passed the order Annexure-11, dismissing the petitioner's appeal filed against present Annexure-4 and 5, under Section 225 of the Rajasthan Tenancy Act, by holding that the proceedings were taken by the Gram Panchayat under the Panchayati Raj Act 1994, hereafter to be referred to as 'the Act', which orders are revisable under Section 97 thereof, and are not appealable to that Court, thus finding the appeal to be without jurisdiction, it was dismissed. Against this order, the petitioner filed a revision petition before the Board of Revenue, which too has been dismissed vide order, Annexure-12, again holding that the provisions of Section 251 of the Tenancy Act are not attracted, and therefore, the appeal was rightly held to be not maintainable.

Assailing the impugned orders, it is contended by the learned counsel for the petitioner, that the Board of Revenue had gone wrong by proceeding on the basis of the earlier judgment of the Board of Revenue in Asharam Vs. Smt. Mani reported in RRD 1991 507, which case proceeded on the basis of the provisions of Section 26(13) of the old Rajasthan Panchayat Act, 1953, which no more survives after enactment of Rajasthan Panchayati Raj Act, 1994. According to the learned counsel, under the Act, the Panchayat enjoys no such power of removing encroachment, in the manner done vide Annexure-4, and as such, since the Act does not confer any right on the Gram Panchayat to pass such an order it cannot be revised under Section 97 of the Act, and the only provision, which could

be attracted was, Section 251 of the Rajasthan Tenancy Act, and therefore, the appeal was rightly filed, which was wrongly rejected, and therefore, the revision was required to be allowed. The next submission made is, that before passing the order, no opportunity of hearing was given to the petitioner, nor any map was produced on record, as to, at what place, encroachment is made, and how it is a public way. Another limb of this very argument was, that if the other party claimed to be having easementary right, whether on account of it being public way, or private easement, the remedy was available by way of civil suit, but no action could be taken under the Act. Still, next submission made is, that until and unless a notification is issued under the provisions of Section 92 of the Land Revenue Act setting apart the as Abadi land, it cannot be said that the land was Abadi land, and that being the position, the only provision which could possibly be attracted, was Section 251 of the Tenancy Act.

I have considered the submissions.

In my view, all the facets of the arguments revolve around the question, as to whether the Panchayat has any such power under the Act, or not? Obviously because, if the Panchayat has power, then the orders, passed by the Panchayat exercising those powers, could be assailed in accordance with the provisions of the Act only. In that view of the matter, I have gone through the Annexure 4 and 5. Vide Annex. 4 the Panchayat has resolved to call upon the petitioner to remove the encroachment made by the petitioner on the old public street, and vide Annex. 5 the petitioner has been so called upon to remove the encroachment within 3 days failing which it would be got removed through Police Force. Admittedly petitioner did not even raise any objection before Panchayat on receipt of Annex. 5, pointing out as to why is he not liable to be called upon to remove the alleged encroachment. Then I have also gone through the provisions of the Act, and find, that according to Section 50, read with the First Schedule, and also read with Rule 165 of the Panchayati Raj Rules, the Panchayat does possess the power to pass such order directing removal of such encroachments, and enforcing such removal through the help of Police force. That being the position, the order of the Panchayat was appealable to the Panchayat Samiti under Section 61, and thereafter a revision would lay under Section 97 thereof.

In that view of the matter, I do not find any error on the part of the learned Addl. Collector, or the Board of Revenue, in finding that the order of the Panchayat was not appealable to the Addl. Collector.

The writ petition thus has no force and is, therefore, dismissed summarily.

( N P GUPTA ), J.

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